

07 SEP - 7 PM 3:31  
RICHARD W. WIECKING  
CLERK, U.S. DISTRICT COURT, CALIFORNIA  
NORTHERN DISTRICT OF CALIFORNIA  
ORIGINAL

1 STEPHEN J. HIRSCHFELD (SBN 118068)  
2 DONNA M. RUTTER (SBN 145704)  
3 ZACHARY P. HUTTON (SBN 234737)  
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E-filing

6 Attorneys for Defendant  
7 ALL RISKS, LTD.

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT

10 SAN FRANCISCO DIVISION

11 C 07 4633

12 MEJ

13 CRUMP INSURANCE SERVICES, INC.  
a corporation and DOES 1-50, inclusive,

14 Case No.

15 NOTICE OF REMOVAL TO FEDERAL  
COURT UNDER 28 U.S.C. SECTIONS 1332  
AND 1443 [DIVERSITY JURISDICTION]

16 Plaintiff,

17 vs.

18 MICHAEL P. MCGRATH, an individual,  
ALL RISKS, LTD., a corporation, and  
Does 1 through 50, inclusive

19 Defendants.

20 TO THE CLERK OF THE COURT:

21 PLEASE TAKE NOTICE that Defendant All Risks, Ltd. hereby removes this action  
from the Superior Court of the State of California in San Francisco County to the United States  
22 District Court for the Northern District of California, pursuant to 28 U.S.C. sections 1332 and  
1441.

23 1. This Court has original jurisdiction over this action under 28 U.S.C. Section 1332  
because it involves citizens of different states and the matter in controversy exceeds the sum of  
24 Seventy-Five Thousand Dollars (\$75,000), exclusive of interest and costs.

25 2. Defendant All Risks, Ltd is informed and believes that on or about August 31,

1 2007, Plaintiff Crump Insurance Services, Inc. filed a Complaint in the Superior Court of the  
2 State of California, County of San Francisco, as Case Number CGC-87-466804 ("Complaint").  
3 A copy of the Complaint is attached hereto as **EXHIBIT A**.

4 3. Plaintiff has not served the Summons and Complaint on Defendant All Risks, Ltd.  
5 or on Defendant Michael McGrath. (See Declaration of Michael P. McGrath in Support of Notice  
6 of Removal). Accordingly, this Notice of Removal is timely because it is filed fewer than thirty  
7 days after service of the Summons and Complaint. *See* 28 U.S.C. § 1446(b).

8 **GROUND FOR REMOVAL ON THE BASIS OF DIVERSITY JURISDICTION**

9 4. This case is properly removable pursuant to 28 U.S.C. § 1441(b), which provides:

10 Any civil action of which the district courts have original  
11 jurisdiction founded on a claim or right arising under the  
12 Constitution, treaties or laws of the United States shall be  
13 removable without regard to the citizenship or residence of the  
parties. Any other such action shall be removable only if none of  
the parties in interest properly joined and served as defendants is a  
citizen of the State in which such action is brought.

14 5. This action is properly removable under 28 U.S.C. § 1441 because the United  
15 States District Court has original jurisdiction over this case under 28 U.S.C. § 1332(a), as  
16 amended, which provides in pertinent part:

17 The district courts shall have original jurisdiction of all civil actions  
18 where the matter in controversy exceeds the sum or value of  
\$75,000, exclusive of interest and costs, and is between—

19 (1) citizens of different states . . . .

20 **A. Citizenship of the Parties**

21 6. There is complete diversity of citizenship between the Plaintiff and the  
22 Defendants.

23 7. Plaintiff Crump Insurance Services, Inc. is a corporation organized and existing  
24 under the laws of the State of Texas, with its principle place of business in the State of Texas.  
25 (See Exhibit A, Complaint, ¶ 1.)

26 8. Defendant All Risks, Ltd. is a corporation organized and existing under the laws of  
27 the State of Maryland, with its principle place of business in the State of Maryland. (See Exhibit  
28 A, Complaint, ¶ 4.)

1           9.     Defendant Michael McGrath is a citizen and resident of the State of California.  
 2 (See Exhibit A, Complaint, ¶ 3.)

3           10.    Defendant All Risks, Ltd. and Defendant Michael McGrath have not been served  
 4 with the Summons and Complaint. (See Declaration of Michael P. McGrath in Support of Notice  
 5 of Removal).

6           **B.     Amount in Controversy**

7           11.    Under 28 U.S.C. § 1332(a), district courts have diversity jurisdiction over civil  
 8 actions where the amount in controversy exceeds \$75,000, exclusive of costs and interest.  
 9 Plaintiff's complaint seeks an unspecified amount of damages. Where the plaintiff's complaint  
 10 does not allege a specific amount of damages, the removing defendant must prove by a  
 11 preponderance of the evidence that the amount in controversy exceeds \$75,000. *Singer v. State*  
 12 *Farm Mutual Automobile Ins. Co.*, 116 F.3d 373, 376 (9<sup>th</sup> Cir. 1997). This burden is easily met if  
 13 it is facially apparent from the allegations in the complaint that plaintiff's claims exceed \$75,000.  
 14 *Simmons v. PCR Technology*, 209 F.Supp.2d 1029 (N.D. Cal. 2002) (holding it was facially  
 15 apparent from the complaint that the amount in controversy exceeded \$75,000 where the plaintiff  
 16 alleged compensatory, punitive and emotional distress damages, plus injunctive relief and  
 17 attorneys' fees).

18           12.    This is a business tort lawsuit filed by Plaintiff against a competitor, Defendant All  
 19 Risks, Ltd., and a former employee who left Plaintiff's employ to work for All Risks, Ltd. (See  
 20 Exhibit A, Complaint, ¶¶ 4, 18-19.) In the Complaint, Plaintiff alleges that Defendants  
 21 maliciously misappropriated trade secrets and confidential information that has "significant  
 22 economic value" to both businesses, intentionally disrupted Plaintiff's relationships with its  
 23 employees, intentionally disrupted Plaintiff's relationships with its customers, and committed  
 24 other wrongs. (See Exhibit A, Complaint, ¶¶ 17, 41, 54-55, 69.) Plaintiff seeks general  
 25 damages, exemplary damages, punitive damages, injunctive relief, and other relief. (See Exhibit  
 26 A, Complaint, ¶ 41 and Prayer for Relief.) The nature of this lawsuit, which involves an  
 27 allegedly "malicious" misappropriation of trade secrets having "significant economic value,"  
 28 coupled with Plaintiff's extensive claims and demand for relief, make it facially apparent from the

1 Complaint that Plaintiff seeks damages in excess of \$75,000. Accordingly, the jurisdictional  
2 amount required for diversity jurisdiction is met in this case.

3 13. If any question arises as to the propriety of the removal of this action, Defendant  
4 All Risks, Ltd. requests the opportunity to present a brief and oral argument in support of their  
5 position that this case is removable.

6 WHEREFORE, Defendant All Risks, Ltd., desiring to remove this case to the United  
7 States District Court for the Northern District of California, and this District being the district of  
8 said Court for the County in which said action is pending, prays that the filing of this Notice of  
9 Removal shall effect the removal to this Court.

10 Dated: September 7, 2007

11 CURIALE DELLAVERSON HIRSCHFELD  
& KRAEMER, LLP

12  
13 By: Zachary P. Hutton  
14 Stephen J. Hirschfeld  
15 Donna M. Rutter  
16 Zachary P. Hutton

17 Attorneys for Defendant  
18 ALL RISKS, LTD.

Exhibit A

FILED  
San Francisco County Superior Court

AUG 31 2007

GORDON PARK-LI, Clerk

BY: *[Signature]* Deputy Clerk

1      **FULBRIGHT & JAWORSKI L.L.P.**  
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5      Attorneys for Plaintiff CRUMP INSURANCE  
6      SERVICES, INC. a Texas Corporation

CASE MANAGEMENT CONFERENCE SET

FEB 01 2008 - 9 AM

7      **SUMMONS ISSUED DEPARTMENT 212**

9      SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10     COUNTY OF SAN FRANCISCO

12     CRUMP INSURANCE SERVICES, INC. a  
13     Texas Corporation,

14     Plaintiff,

15     v.

16     MICHAEL P. MCGRATH, an individual, ALL  
17     RISKS, LTD. a corporation, and Does 1 through  
18     50, inclusive,

19     Defendants.

)     Case No. **CSC-07-466804**

)     [Unlimited Civil Complaint]

)     Assigned For All Purposes To The  
19     Honorable

)     **COMPLAINT FOR DAMAGES FOR:**

)     (1) BREACH OF CONTRACT;  
19     (2) MISAPPROPRIATION OF  
20     TRADE SECRETS;  
21     (3) BREACH OF FIDUCIARY  
22     DUTY;  
23     (4) INTENTIONAL  
24     INTERFERENCE WITH  
25     PROSPECTIVE ECONOMIC  
26     ADVANTAGE (CLIENTS);  
27     (5) NEGLIGENT INTERFERENCE  
28     WITH PROSPECTIVE ECONOMIC  
       ADVANTAGE (CLIENT);  
       (6) INTENTIONAL  
       INTERFERENCE WITH  
       PROSPECTIVE ADVANTAGE  
       (EMPLOYEES);  
       (7) NEGLIGENT INTERFERENCE  
       WITH PROSPECTIVE ECONOMIC  
       ADVANTAGE (EMPLOYEES)

ORIGINAL

1 Plaintiff Crump Insurance Services, Inc., as successor to Crump E&S of San Francisco  
2 Insurance Services, Inc. alleges as follows:

3 **I.**

4 **THE PARTIES**

5 1. Plaintiff Crump Insurance Services, Inc. ("Crump") is a corporation organized and  
6 existing under the laws of the State of Texas, with its principle place of business located in  
7 Dallas, Texas. Crump is the successor in interest to Crump E&S of San Francisco Insurance  
8 Services, Inc. Plaintiff is engaged as an intermediary in the business of providing insurance to  
9 customers.

10 2. At all times material hereto Plaintiff was qualified to do business in the State of  
11 California.

12 3. Defendant Michael P. McGrath ("McGrath") is an individual residing in the State  
13 of California, City of Novato.

14 4. Plaintiff is informed and believes, and on that basis alleges that Defendant All  
15 Risks, Ltd. ("All Risks") is a corporation believed to exist under the laws of the State of  
16 Maryland, with its principal place of business located in Hunt Valley, Maryland. Defendant All  
17 Risks is a competitor of Plaintiff in the insurance business.

18 5. Plaintiff is ignorant of the true names and capacities of those individuals and  
19 entities sued herein as Doe Defendants 1 through 50, inclusive. Plaintiff will amend this  
20 Complaint to set forth their true names and capacities at such time as they are ascertained.

21 6. Plaintiff is informed and believes, and on that basis alleges that those defendants  
22 sued herein as Does 1 through 50, inclusive, participated in the wrongs alleged herein, in various  
23 capacities and are liable to Plaintiff for the claims asserted herein.

24 **II.**

25 **BACKGROUND FACTS**

26 7. On or about June 7, 1996, Defendant Michael P. McGrath entered into a written  
27 contract titled "Memorandum of Agreement" with Crump E&S of San Francisco Insurance  
28 Services, Inc. Plaintiff Crump Insurance Services, Inc. is the successor in interest to Crump E&S  
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1 of San Francisco Insurance Services, Inc. A true and correct copy of the Memorandum of  
2 Agreement is attached hereto as Exhibit 1.

3 8. Since the original Memorandum of Agreement was entered into in 1996, the  
4 parties thereto have executed extensions of the Memorandum of Agreement. On or about April  
5 30, 2007, Plaintiff and McGrath executed the "Broker Compensation Agreement." The Broker  
6 Compensation Agreement, effective January 1, 2007, extended the terms of the Memorandum of  
7 Agreement.

8 9. Pursuant to the June 7, 1996 Memorandum of Agreement, McGrath agreed to a  
9 number of terms which he has violated as alleged more particularly below.

10 10. Pursuant to paragraph 10 of the June 7, 1996 Memorandum of Agreement,  
11 McGrath agreed that in the course of his employment, he would obtain confidential information  
12 belonging to Crump. This information would relate to the persons, firms, and corporations which  
13 were, or would become, customers of Crump. Such confidential information would include, but  
14 not be limited to, the names of customers, policy expirations dates, policy terms, conditions and  
15 rates, and familiarity with customers' risks. Defendant McGrath agreed that he would not  
16 disclose or make use of such confidential information, except as was required in the course of his  
17 employment. He further agreed that upon termination of his employment, and for a period of one  
18 year thereafter, he would not disclose or make use of such confidential information without the  
19 prior written consent of Crump.

20 11. Pursuant to paragraph 11 the June 7, 1996 of the Memorandum of Agreement,  
21 McGrath agreed that all records, files, manuals, lists of customers, blanks, forms, materials,  
22 supplies, computer programs and other materials furnished to him by Crump would remain the  
23 property of Crump. He further acknowledged that this property was confidential and not readily  
24 accessible to Crump's competitors. Upon termination of the employment relationship, McGrath  
25 agreed that he would immediately deliver to Crump or its authorized representatives all such  
26 property, including copies.

27 12. Pursuant to paragraph 13 of the Memorandum of Agreement, McGrath agreed that  
28 so long as he working for Crump, he would not engage in business activities competitive with the

1 work he performed for Crump.

2 13. McGrath further agreed pursuant to paragraph 14 of the Memorandum of  
3 Agreement, that he would not solicit employees of Crump for any other competitive company.

4 14. McGrath also agreed pursuant to paragraph 16 of the Memorandum of Agreement  
5 that he would provide 15 days prior written notice to Crump should he wish to terminate his  
6 position as an employee of Crump.

7 15. At some time prior to June 3, 2007, McGrath negotiated with Defendant All Risks  
8 to cease being an employee of Plaintiff Crump and instead to become an employee of All Risks.  
9 At some time prior to June 3, 2007, McGrath decided that he would terminate his employment  
10 with Crump and begin employment with All Risks.

11 16. Prior to June 3, 2007, Defendant McGrath decided that he would take advantage of  
12 the proprietary information of Crump and use such information to the advantage of himself and  
13 his new employer, All Risks.

14 17. On or about May 31, 2007, after having decided that he would be leaving Plaintiff  
15 Crump, and that he would be working for Defendant All Risks, Defendant McGrath, in violation  
16 of the terms of this contract, and his obligations to Plaintiff, obtained information from Plaintiff  
17 on expiration dates of policies, commissions, and customer renewal information. This  
18 information was proprietary and confidential and of significant economic value to Plaintiff, and  
19 would similarly have significant economic value to Defendant All Risks.

20 18. On or about June 3, 2007, without complying with the minimum 15 days written  
21 notice provision set forth in the Memorandum of Agreement, paragraph 16, McGrath abruptly  
22 notified Crump that he was terminating his employment with Crump and immediately  
23 commencing employment with a competitor, Defendant All Risks.

24 19. Since June 4, 2007, Defendant McGrath has been an employee of Defendant All  
25 Risk and has engaged in the conduct alleged herein below.

VII.

**FIRST CAUSE OF ACTION**

### **[Breach of Contract – Against Defendant McGrath]**

20. Crump incorporates by reference herein the allegations of paragraph 1 through 19 above.

21. Pursuant to the express terms of the June 7, 1996 Memorandum of Agreement, as renewed at various times through and including January 1, 2007, McGrath had agreed to those express obligations noted above in paragraphs 10 through 14 with respect to the utilization of confidential information belonging to Crump.

22. Plaintiff is informed and believes, and on that basis alleges that McGrath breached a number of provisions of the June 7, 1996 Memorandum of Agreement, including but not limited to paragraph 10, paragraph 11, paragraph 13, paragraph 14, and paragraph 16 thereof.

23. In particular, McGrath improperly and unlawfully misappropriated and used confidential information belonging to Crump. Plaintiff is informed and believes, and on that basis alleges that that this information included the identity of persons, firms and corporations which had become customers or accounts of Crump.

24. Plaintiff is informed and believes, and on that basis alleges that that the information used by McGrath also included the source with which the insurance was placed, as well as the names of customers, policy expiration dates, policy terms, conditions and rates and familiarity with the customers' risk, all of which were agreed constituted confidential information belonging to Crump.

25. At no time did Crump give its written consent to McGrath to utilize any of the confidential information.

26. Plaintiff is informed and believes, and on that basis alleges that McGrath disclosed to his new employer, All Risks, the confidential information which belonged to Crump.

27. McGrath breached the June 7, 1996 Memorandum of Agreement in that he improperly and unlawfully took for his own use, and the use of his new employer, All Risks, records, files and lists as well as other materials which had been furnished to him as a Crump

1 employee. Plaintiff is informed and believes, and on that basis alleges that that such information  
2 included confidential information belonging to Crump.

3 28. Plaintiff is informed and believes, and on that basis alleges that Defendant  
4 McGrath obtained and has used electronic versions of confidential information of Crump.

5       29. Plaintiff is informed and believes, and on that basis alleges that while still under  
6 the employ of Crump, Defendant McGrath engaged in business activities which were competitive  
7 with the work he performed at Crump, in violation of his obligations to Crump.

8       30. Plaintiff is informed and believes, and on that basis alleges that while still an  
9 employee of Crump, Defendant solicited Crump employees to cease their employment with  
10 Crump, and instead commence employment with McGrath's new employer. All Risks

11       31. Notwithstanding the fact that McGrath had agreed that he would provide 15 days  
12 prior written notice to Crump should he wish to terminate the June 7, 1996 Memorandum of  
13 Agreement, Crump breached such provision and failed to provide timely written notice of his  
14 intent to terminate the relationship.

15       32. Plaintiff has performed each and every obligation imposed on it by the contract of  
16 the parties in accordance with the terms thereof, except to the extent that such performance was  
17 excused or prevented by the acts of defendant.

18       33. Plaintiff has been damaged by the various breaches of contract of McGrath in an  
19 amount which has not yet been ascertained. Plaintiff will seek leave of this Court to state the  
20 amount of its damages at such time as they are ascertained.

IV

## SECOND CAUSE OF ACTION

## [Misappropriation Of Trade Secrets -

**Against Defendants McGrath, All Risks and Does 1-50,1**

25 34. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
26 33 above.

27       35. During the course of his employment, Defendant McGrath had access to, and was  
28 provided various trade secrets which belonged to Plaintiff. These include, *inter alia*, client lists.

1 expiration lists, underlying client information, and information regarding co-employees.

2 36. The information provided to Defendant McGrath was provided to him so that he  
 3 could perform his duties and obligations as an employee of Plaintiff. The information made  
 4 known to Defendant McGrath constituted trade secrets within the meaning of California Civil  
 5 Code Section 3426 *et seq.*

6 37. The information made known to Defendant McGrath had independent economic  
 7 value and was not generally known to the public or to other persons who could obtain economic  
 8 value from its disclosure or use.

9 38. At all times material hereto, Plaintiff took reasonable and appropriate efforts to  
 10 maintain the secrecy of its trade secrets.

11 39. Plaintiff is informed and believes, and on that basis alleges Defendants McGrath,  
 12 All Risks and Does 1-50 made use of the trade secrets of Plaintiff. Further, Defendants All Risks  
 13 and Does 1-50 obtained economic benefit by the use of the Plaintiff's trade secret.

14 40. Defendants have been unjustly enriched in that they have obtained the economic  
 15 value of the trade secrets of Plaintiff.

16 41. Plaintiff is informed and believes, and on that basis alleges that Defendants actions  
 17 were willful and malicious in misappropriating the trade secrets of Plaintiff, such that exemplary  
 18 damages may be awarded pursuant to Civil Code Section 3426.3.

19 42. Plaintiff has been damaged in an amount which is not presently known to Plaintiff.  
 20 Plaintiff will amend this Complaint to set forth the amount of damages it sustained at such time as  
 21 that amount is ascertained.

22 V.

23 **THIRD CAUSE OF ACTION**

24 **[Breach Of Fiduciary Duty – Against Defendant McGrath]**

25 43. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
 42 above.

27 44. Defendant McGrath was a fiduciary of Plaintiff as a result of the position he held  
 28 and with respect to the information provided to him such as client lists, expiration lists,

1 underlying client information, and information relating to employees of Plaintiff.

2 45. Defendant McGrath was obligated as a fiduciary to make use of the information  
3 provided to him solely in performing his obligation to Plaintiff.

4 46. Defendant McGrath breached his fiduciary duty to Plaintiff by, *inter alia*,  
5 supplying to a competitor, All Risks, the information identified hereinabove, and making use of  
6 that information to obtain form All Risk the benefits of that information and the business it  
7 generated.

8 47. Defendant McGrath breached his fiduciary duty to Plaintiff by using the  
9 information relating to employees of Plaintiff in order to solicit such employees to leave Plaintiff  
10 Crump and to join Defendant All Risks.

11 48. As a result of the breach of fiduciary duty, Plaintiff has been damaged in an  
12 amount not yet ascertained. Plaintiff will amend this Complaint to set forth such amount when  
13 the amount has been ascertained.

14 49. The conduct of Defendant McGrath was undertaken with malice and oppression  
15 with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages  
16 from Defendant McGrath.

17 VI.

18 **FOURTH CAUSE OF ACTION**

19 [Intentional Interference With Prospective Economic Advantage (Clients) – Against  
20 Defendants McGrath and All Risks and Does 1-50]

21 50. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
22 49 above.

23 51. Plaintiff has a prospective economic advantage with respect to those of its  
24 customer known to McGrath, to whom Plaintiff had provided insurance services.

25 52. Plaintiff is informed and believes, and on that basis alleges that Defendant All  
26 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic  
27 advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This  
28 prospective economic advantage was derived from, in part, the confidential information of  
31369348.3

Crump,

53. Plaintiff had a reasonable expectation and likelihood that it would continue to obtain the economic advantage arising from its preexisting relationships between Plaintiff and its clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of Defendants alleged herein, the economic relationship would have continued.

54. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 intended to interfere with that prospective economic advantage and did so by making use of the confidential information provided to it by Defendant McGrath.

55. The actions of Defendants actually caused the disruption of the economic relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

56. As a result of that conduct, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of damages are ascertained.

57. The conduct of Defendant All Risks and Does 1-50 was undertaken with malice and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of punitive damages from Defendant All Risks.

VII.

## **FIFTH CAUSE OF ACTION**

**[Negligent Interference With Prospective Economic Advantage (Clients) – Against Defendants McGrath and All Risks and Does 1-50]**

58. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
49 above.

59. Plaintiff has a prospective economic advantage with respect to those of its customer known to McGrath, to whom Plaintiff had provided insurance services.

60. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic advantage with respect to Plaintiff's clients who were known to Defendant McGrath. This prospective economic advantage was derived from, in part, the confidential information of

Спирт.

61. Plaintiff had a reasonable expectation and likelihood that it would continue to obtain the economic advantage arising from its preexisting relationships between Plaintiff and its clients who were serviced or otherwise known to Defendant McGrath. Absent the conduct of Defendants alleged herein, the economic relationship would have continued.

62. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 knew that if they did not act with reasonable care, their conduct would interfere with the prospective economic advantage.

63. Defendants did not act with due care, but instead acted negligently in that they did not take appropriate steps to insure that Defendant McGrath did not misuse the proprietary information of Crump by McGrath.

64. The actions of Defendants actually caused the disruption of the economic relationship between Plaintiff and some of its customers who were known to Defendant McGrath.

65. As a result of that conduct, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of damages are ascertained.

VIII.

## **SIXTH CAUSE OF ACTION**

[Intentional Interference With Prospective Economic Advantage (Employees) – Against Defendants McGrath and All Risks and Does 1-50]

66. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
49 above.

67. Plaintiff is informed and believes, and on that basis alleges that Defendant All Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic advantage with respect to its employees who were known to Defendant McGrath.

68. Plaintiff had a reasonable expectation and likelihood that it would continue to obtain the economic benefits provided by those employees, arising from its preexisting employment relationships.

1       69. Plaintiff is informed and believes, and on that basis alleges that Defendant All  
2 Risks and Does 1-50 intended to interfere with that prospective economic relationship existing  
3 with Plaintiff's employees, and did so by making use of the confidential information provided to  
4 it by Defendant McGrath with regard to such employees.

5 Plaintiff is informed and believes, and on that basis alleges that as a result of the  
6 actions of Defendants, the employees were induced to terminate their employment with Plaintiff  
7 and commence employment with Defendant All Risks.

8       71.     As a result of that conduct, Plaintiff has been damaged in an amount not yet  
9 ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of  
10 damages are ascertained.

11       72.     The conduct of Defendant All Risks and Does 1-50 was undertaken with malice  
12 and oppression with the desire to harm Plaintiff such that Plaintiff is entitled to the award of  
13 punitive damages from Defendant All Risks.

IX

## SEVENTH CAUSE OF ACTION

**[Negligent Interference With Prospective Economic Advantage (Employees) – Against Defendants McGrath and All Risks and Does 1-50]**

18 73. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through  
19 49 above.

20 74. Plaintiff is informed and believes, and on that basis alleges that Defendant All  
21 Risks and Does 1-50 were aware of the fact that Plaintiff had a continuing prospective economic  
22 advantage with respect to its employees who were known to Defendant McGrath.

23       75. Plaintiff had a reasonable expectation and likelihood that it would continue to  
24 obtain the economic benefits provided by those employees, arising from its preexisting  
25 employment relationships.

26 Plaintiff is informed and believes, and on that basis alleges that Defendant All  
27 Risks and Does 1-50 knew that if they did not exercise due care, that their conduct would  
28 interfere with that prospective economic relationship existing with Plaintiff's employees.

77. Defendants acted negligently in that they did not take appropriate steps to insure that no improper use of Plaintiff's proprietary information about its employees was used in order to seek to induce such employees to terminate their relationship with Plaintiff. Instead, confidential information provided to Defendant All Risks by Defendant McGrath with regard to such employees was used.

78. Plaintiff is informed and believes, and on that basis alleges that as a result of the actions of Defendants, the employees were induced to terminate their employment with Plaintiff and commence employment with Defendant All Risks.

79. As a result of that conduct, Plaintiff has been damaged in an amount not yet ascertained. Plaintiff will seek leave to amend this Complaint at such time as the amount of damages are ascertained.

WHEREFORE, Plaintiff prays for judgment as follows:

1. For damages according to proof;
2. For punitive damages;
3. For appropriate injunctive relief preventing the use by Defendants of Plaintiffs proprietary information;
4. For costs of suit herein;
5. For such other and further relief as the Court deems just and proper.

Dated: August 30, 2007

**FULBRIGHT & JAWORSKI L.L.P.**  
~~DOUGLAS W. STERN~~ D

By DOUGLAS W. STERN  
Attorneys for Plaintiff CRUMP INSURANCE  
SERVICES, INC.